

Application No.: 09/086,821

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Docket No.: 324212005500

REMARKS

Claims 1, 6-16, 25 and 34-37 were pending in the present application. No claims are withdrawn from consideration. By virtue of this response, no claims are cancelled, amended, or added. Accordingly, claims 1, 6-16, 25, and 34-37 are currently under consideration. Amendment and cancellation of certain claims is not to be construed as a dedication to the public of any of the subject matter of the claims as previously presented. No new matter is added.

Rejections under 35 USC § 103

Claims 1, 6-16, 25, and 34-37 are rejected under 35 USC § 103(a) as allegedly being unpatentable over Hu U.S. Patent No. 6,173,322 [hereinafter Hu] in view of Wolff U.S. Patent No. 6,185,601 [hereinafter Wolff].

Claims 1, 15 and 37

On July 2, 2001, the Applicants filed a 37 C.F.R. 1.131 declaration that included an Exhibit B, which is a copy of "WebSpective LA Installation and User Guide." Paragraph 5 of the declaration stated that this document is dated July 16, 1997. This document describes the limitations of claims 1, 15, and 37, including the operation and use of the "interceptor" as well as its distribution as software at for example, pages 4, and 11-17. The declaration also describes how Exhibit B applies to other limitations of the claims. Thus, this Exhibit and the existing 37 C.F.R. 1.131 declaration demonstrate that the Applicants conceived and reduced to practice claims 1, 15, and 37 prior to April 15, 1998.

Applicants submit that Wolff was filed on April 15, 1998 and is a continuation-in-part of an application that was filed on August 1, 1997 (and which matured into Pat No. 5,999,930 -- the '930 Patent.) Applicants submit that the rejection relies on Figures 6 and 7A, as well as column 15, lines 15-42 (Non-Final Rejection at 3). Applicants submit that the subject matter of these portions of Wolff (the '601 patent) does not appear in the '930 Patent. More specifically, the '930 Patent is to a "Method and apparatus for distributed control of a shared storage volume" in which "clients on

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a network share responsibility for the coherency" of the data storage volume. (Abstract.) Aspects related to "dynamic load balancing of a network of client and server computers" in Wolff (the '601 Patent) are not apparent in the '930 Patent. Thus, the cited portions of Wolff would not be entitled to a priority date before April 15, 1998. Because the relied-upon teachings of Wolff have a 102(e) date no earlier than April 15, 1998, Wolff would not be prior art against claims 1, 15 and 37 at least for the teachings relied upon in the Non-Final Rejection. Applicants therefore respectfully request withdrawal of the rejection against claims 1, 15 and 37.

Claim 6-13, 25, and 34-36

Claims 6-13 depend from claim 1, and Applicants submit that they therefore are allowable at least by virtue of their dependency from claim 1 and request withdrawal of the rejection against them.

Claim 16

Claim 16 depends from claim 15. Applicants submit that it is allowable at least by virtue of such dependency and request withdrawal of the rejection.

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CONCLUSION

In view of the above, each of the presently pending claims in this application is believed to be in immediate condition for allowance. Accordingly, the Examiner is respectfully requested to withdraw the outstanding rejection of the claims and to pass this application to issue. If it is determined that a telephone conference would expedite the prosecution of this application, the Examiner is invited to telephone the undersigned at the number given below.

In the event the U.S. Patent and Trademark office determines that an extension and/or other relief is required, applicant petitions for any required relief including extensions of time and authorizes the Commissioner to charge the cost of such petitions and/or other fees due in connection with the filing of this document to Deposit Account No. 03-1952 referencing docket no. 324212005500. However, the Commissioner is not authorized to charge the cost of the issue fee to the Deposit Account.

Dated: January 26, 2007

Respectfully submitted

By 
Michael S. Garrabrant
Registration No.: 51,230
MORRISON & FOERSTER LLP
425 Market Street
San Francisco, California 94105-2482
(415) 268-6824

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